

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2123 of 2021**

Arising Out of PS. Case No.-48 Year-2019 Thana- MAHILA P.S. District- Bhagalpur

MD FAIZAN (Male), aged about 18 years, S/o Ramjan Ansari, Resident of
Sakrullahchak, P.S.- Babarganj, District- Bhagalpur.

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

Appearance :

For the Appellant : Mr. Praveen Kumar, Advocate
For the Respondent : Mr. Zeyaul Hoda, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER**

4 09-03-2022 Learned counsel for the appellant is directed to
remove the defects, as pointed out by the office, within a period
of four weeks.

The present appeal has been preferred against the
order dated 22.08.2020, passed by learned Special Judge
(Children), Bhagalpur, in Special Case (Children) No. 07 of
2020, whereby and whereunder the prayer for grant of regular
bail of the appellant has been rejected in connection with
Bhagalpur Mahila P.S. Case No. 48 of 2019 registered for the
offences under Section 376 (D) of the Indian Penal Code and
under Section 4 of the POCSO Act.

The case of the prosecution, in brief, is that the
fardbeyan of the victim/informant was recorded on 17.10.2019,
wherein she has stated that she used to talk to the appellant.



When she was going to buy milk, the appellant asked her that he needs to talk with her and took her to forest area. There she saw three boys, namely, Rabin Kumar, Sonia Goswami and Arbind Choudhary. These three boys took the informant and the appellant towards forest and asked the appellant to commit rape upon the informant else they will kill him. Then, the appellant raped the informant. Thereafter, all three boys, namely, Rabin Kumar, Soniya Goswami and Arbind Choudhary raped the informant one after the other. The informant raised alarm but no one listened. One of the three boys made the appellant sit and another boy went to shop. The third boy was asked by the informant to bring water, when he went to fetch water, the informant ran away and reached police station. On the basis of the *fardbeyan* of the informant, the police registered a case i.e., Bhagalpur Mahila P.S. Case No. 48 of 2019 under Section 376(D) of the Indian Penal Code and Section 4 of the POCSO Act.

Learned counsel for the appellant submits that the appellant is a juvenile and is in custody since 19.10.2019. Investigation is complete and charge sheet against the appellant has already been submitted in this case. There is no allegation of tampering with the witnesses alleged against the appellant. The



appellant has no criminal antecedent. It has further been submitted that from perusal of the medical report of the victim, it would appear that there is no external injury on the body of the victim and no spermatozoa was found in the pathology report as well. However, there is a small tear of 1 cm on the private part of the victim. In such view of the matter, the medical report does not fully support the allegation of gang rape by four persons on a minor and thus the prosecution story becomes doubtful. It is further submitted that the mother of the appellant is ready to undertake that she will take proper care of the appellant and will not allow him to associate with any criminal or anti-social element. It has been pointed out by learned counsel for the appellant that the court below while deciding the bail application of the appellant has fallen in error of law and has rejected the bail application of the appellant on merit. Whereas, the bail application of the appellant was required to be considered in light of Section 12 of the Juvenile Justice Act, 2015. In order to support his argument, learned counsel for the appellant has relied upon the case of ***Lalu Kumar and Others V. The State of Bihar (reported in 2019 (4) PLJR 833)*** where a Division Bench of this Court while considering the scope of Section 12 of the Juvenile Justice Act,



2015, in paragraph no. 84 of the judgment has observed the following:

*“ 84. While interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of ‘best interest’, ‘repatriation’ and ‘restoration’ of child. The fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences, as bailable or non-bailable under the Cr. P.C. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances when there is reasonable ground for believing that:-
(i) The release is likely to bring that person into association with any known criminal;
(ii) The release is likely to expose the said person to moral or psychological danger;
and
(iii) The release would defeat the ends of justice.”*

(emphasis supplied)

On the other hand, learned A.P.P. for the State has submitted that the appellant is named in the F.I.R. and the victim in her statement recorded under Section 164 of Cr. P.C. has supported the allegation of rape against the appellant. Further, it is submitted by him that the release of the appellant will defeat



the ends of justice.

Having regard to the facts and circumstances of the case, Social Investigation Report of the appellant was called for from the concerned Probation Officer by order dated 26.11.2021. The Probation Officer in his report has reported that prior to the occurrence, the appellant and the victim were into love affair. Further, the appellant was never accused of any wrongful behaviour and his image is that of a calm child. It is further suggested that the appellant should pursue his further studies. From perusal of the Social Investigation Report of the appellant, it is evident that the release of the appellant would neither bring him into association of any criminal nor expose him to any moral or psychological danger.

The law requires that reasonable grounds should be there for believing that in the event of grant of bail, the appellant would go into association of any 'known criminal' or exposed to moral, physical and psychological danger or the release of the person would defeat the ends of justice. There is no reference of any known criminal nor there is any other substantive material for the conclusion as recorded by the court below.

Hence, the order dated 22.08.2020 passed by Special



Judge (Children), Bhagalpur, suffers from failure to exercise jurisdiction vested in law and is a result of non-consideration of provisions of law. Accordingly, this appeal is allowed and the order dated 22.08.2020 passed by Additional District and Sessions Judge-I-cum-Special Judge (Children), Bhagalpur, passed in Special Case (Children) No. 07/2020 is set aside.

Let the appellant, who has already been declared juvenile by the learned Juvenile Justice Board, be released in favour of his mother on execution of surety bond of Rs. 10,000/- (Rupees Ten Thousand Only), to the satisfaction of learned Special Judge, (Children), Bhagalpur, in connection with Bhagalpur Mahila P.S. Case No. 48 of 2019, with the condition that, the mother of the appellant shall furnish an undertaking that while the appellant is on bail, she will not allow the appellant to come in company/association with any criminal or anti-social element and that she will take proper care of the appellant. Further, the appellant will be produced as and when required by the court below and shall co-operate during the trial.

(Sudhir Singh, J)

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